

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 14-188—sHB 5312**

*Government Administration and Elections Committee*

**AN ACT CONCERNING STATE CONTRACTING, GOVERNMENT  
ADMINISTRATION AND NOTIFICATION REGARDING EXTENSIONS  
OF POLLING PLACE HOURS**

**SUMMARY:** This act makes several unrelated changes concerning state contracting, government administration, and elections. Among other things, it increases, from \$500,000 to \$1.5 million, the (1) threshold triggering requirements for a competitive bidding process for state public works projects administered by the Department of Administrative Services (DAS) and (2) cost of emergency repairs that DAS may contract for without first securing the governor's consent and certifying the need for repairs to the Legislative Management Committee. It establishes a separate selection process for DAS-administered projects that cost \$1.5 million or less. It also requires certain subcontractors to be prequalified by DAS at the time a bid is submitted, rather than the time the project starts.

The act allows, for DAS construction manager at risk (CMR) projects that involve renovations of existing buildings or facilities, (1) certain work to begin before the project's guaranteed maximum price (GMP) is determined and (2) a separate GMP to be determined for each phase of a multi-phase project. It also specifically allows the DAS commissioner:

1. to enter into "on-call" contracts with architects, professional engineers, and construction administrators for certain projects involving the Military Department or the Department of Energy and Environmental Protection (DEEP) and
2. when purchasing equipment, supplies, materials, or other property or services needed to fulfill his public works-related responsibilities, to (a) use cooperative purchasing and (b) purchase directly from the federal government.

The act allows the DAS commissioner to expand the janitorial work program for people with a disability or disadvantage to include other services he deems appropriate. It extends the program's exemption from state set-aside laws to these services.

The act also:

1. requires state contracting agencies to evaluate certain privatization contracts to determine if they are the most cost-effective way of delivering the service and
2. eliminates a prohibition on direct involvement, by nonclerical employees in the DAS unit that acquires, leases, and sells real property, in any enterprise that (a) does business with the state or (b) is concerned with real

## OLR PUBLIC ACT SUMMARY

estate acquisition or development.

Each time the DAS commissioner extends a contract for goods and services without competitive bidding, the act requires him to explain why he did so. He must post the explanation on DAS's website, but the act sets no deadline for doing so (§ 1). Existing law requires him to make certain written determinations before extending such a contract (see BACKGROUND).

The act establishes (1) October 30 as Are You Dense? Breast Cancer Awareness Day and (2) October 9 as Neurological Disorders Awareness Day. It requires suitable exercises to be held in the State Capitol or elsewhere as the governor designates (§ 9). It also specifies that the Department of Rehabilitation Services (DORS) can accept a bequest or gift of money. The department could already accept a bequest or gift of personal property and a devise or gift of real property (§ 10).

The act requires certain individuals to be notified by registrars of voters when polling place hours are extended. Lastly, it makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2014, except for the provisions concerning (1) the awareness days, DORS, employees in DAS's property unit, and notification of polling place hour extensions, which are effective upon passage, and (2) the work program and privatization contracts, which are effective October 1, 2014.

### §§ 2, 4, & 5 — COMPETITIVE BIDDING THRESHOLD

The act increases, from \$500,000 to \$1.5 million, the project cost threshold triggering competitive bidding requirements for DAS-administered public works projects. Under prior law, with certain exceptions (e.g., Department of Transportation (DOT)-administered projects), any contract for the construction, reconstruction, alteration, remodeling, repair, or demolition of any public building or any other public work by the state estimated to cost more than \$500,000 had to be awarded, through competitive bidding, to the lowest responsible DAS-prequalified contractor. The act retains the \$500,000 competitive bidding threshold for projects administered by other agencies (e.g., the Judicial Branch and Legislative Management Committee).

#### *Projects Costing \$1.5 Million or Less*

The act allows the DAS commissioner to establish a list of preapproved contractors for DAS-administered public works projects estimated to cost the state \$1.5 million or less. The commissioner must use the department's existing prequalification classifications to determine the specific categories of services that each contractor may perform. It allows the commissioner to establish, for the purpose of selecting and utilizing small contractors and minority business enterprises, a separate list for projects that cost less than \$500,000 (see BACKGROUND).

The act requires the commissioner to invite contractors to submit qualifications for each specific category of services by posting a notice on the State Contracting Portal. The notice must be in a form he determines and set forth

the information that a contractor must submit. For each specified category, the commissioner must select those contractors:

1. determined to be most responsible and qualified to perform the work required;
2. that have demonstrated the skill, ability, and integrity to fulfill contract obligations through their past performance, financial responsibility, and experience with projects of the size, scope, and complexity required under the specified category; and
3. that can obtain requisite bonding if the project costs more than \$500,000.

The commissioner must invite bids only from contractors on the lists based on the category of work to be completed. He must determine the form of bid invitation, manner of and time for bid submission, and the bids' conditions and requirements. He generally must award the contract to the lowest responsible qualified bidder. However, if the bid invitation produces fewer than three responses or all bids exceed the project's available funds, the act allows the commissioner to (1) negotiate a contract with any of the bidders or (2) reject the bids and rebid the project under the standard competitive bidding process.

### § 3 — SUBCONTRACTOR PREQUALIFICATION

Existing law requires subcontractors with contracts worth more than \$500,000 for public works projects paid for in whole or in part by the state, except for those administered by DOT, to be prequalified by DAS. The act requires these subcontractors to be prequalified at the time a bid is submitted, rather than when the project starts as prior law required.

### § 5 — EMERGENCY REPAIRS

Existing law allows the DAS commissioner and the Legislative Management Committee to enter into contracts for emergency repairs to state facilities under their control without competitive bidding. Under prior law, the commissioner could not act on a project costing more than \$500,000 without (1) the governor's written consent and (2) certifying to the Legislative Management Committee that a competitive bidding exception is warranted because of the project's emergency nature. The act increases the threshold for invoking these conditions to \$1.5 million.

### § 6 — CMR PROJECTS

By law, a CMR project cannot proceed until the GMP is determined, except for site preparation and demolition work for which contracts have previously been bid and awarded (see BACKGROUND). For CMR projects that involve renovations of existing buildings or facilities, the act allows public utility installation and connections, and building envelope components (e.g., roof, doors, windows, and exterior walls), to also begin before the GMP is determined, as long as (1) they have previously been bid and awarded and (2) the early work's (including site preparation and demolition) total cost is not more than 25% of the

entire project's estimated construction cost. The act also allows a separate GMP to be determined for each phase of a multi-phase project that involves renovating an existing building while it remains occupied. Under prior law, one GMP was determined for the entire project.

The act eliminates a requirement that the construction manager for a DAS-administered CMR project advertise, in one or more newspapers having general circulation in the state, bidding opportunities for project elements (i.e., trade packages) of a CMR project. Instead, it conforms the law to current practice by requiring that such opportunities be posted on the State Contracting Portal.

## § 7 — ON-CALL CONTRACTS

The act specifically allows DAS to enter into “on-call” contracts with architects, professional engineers, and construction administrators “for a particular program involving various projects” for constructing or renovating buildings under the control of either the Military Department or DEEP. Under existing law, DAS can enter into on-call contracts for a range of consultant services or a range of tasks pursuant to a task letter detailing the services to be performed (see BACKGROUND).

Under the act, “program” means multiple projects involving the planning, design, construction, repair, improvement, or expansion of specified buildings, facilities, or site improvements. The work involved (1) must be of a repetitive nature, (2) must share a common funding source that imposes particular requirements, or (3) would be significantly facilitated and completed by using the same design professional or construction manager.

## § 8 — COOPERATIVE PURCHASING

The act specifically allows the DAS commissioner, when purchasing equipment, supplies, materials, or other property or services needed to fulfill his public works-related responsibilities, to (1) use cooperative purchasing and (2) purchase them directly from the federal government.

By law, the commissioner may join with federal agencies, other states, Connecticut political subdivisions, or nonprofit organizations in cooperative purchasing plans when it is in the state's best interests to do so. He may also, on the state's behalf, purchase equipment, supplies, materials, and services by joining existing purchasing contracts with these entities or public consortia. The state is subject to the same contract terms and conditions as the other entities. The commissioner may also, on the state's behalf, purchase, lease, or otherwise acquire equipment, supplies, materials, or other property from the federal government.

## §§ 11-14 — JANITORIAL PROGRAM

The act allows the DAS commissioner to expand the janitorial work program for people with a disability or disadvantage to include “contractual services” such as laundry and cleaning services, mail supply room staffing, data entry, call center

staffing, and other services he specifies. The commissioner must post on the department's website a list of the contractual services he deems appropriate to include in the program.

Under the program, the DAS commissioner awards contracts to qualified partnerships, which are commercial janitorial (or, under the act, service) contractors and community rehabilitation programs, designated by the Connecticut Community Providers Association, that meet certain criteria. Under prior law, the contractor had to employ at least 200 people who perform janitorial work in Connecticut. The act instead requires the contractor to employ at least 200 people who perform janitorial work or contractual services in Connecticut.

By law, the program must create and expand work opportunities, specifically full-time jobs or full-time equivalents at standard wage rates, for people with a disability (excluding blindness) and people with a disadvantage (see BACKGROUND). The law establishes requirements concerning (1) bidding on and awarding the contracts and (2) reporting by qualified partnerships. The Judicial Branch and Board of Regents for Higher Education may also participate in the program.

#### § 15 — DAS PROPERTY UNIT

The act eliminates a prohibition on direct involvement, by nonclerical employees in the DAS unit that acquires, leases, and sells real property, in any enterprise that (1) does business with the state or (2) is concerned with real estate acquisition or development. Such employees remain subject to the State Code of Ethics, which, among other things, prohibits state employees from accepting outside employment that (1) is in substantial conflict with their state duties, (2) impairs their independence of judgment regarding their state duties, or (3) encourages them to disclose confidential information.

#### § 16 — PRIVATIZATION CONTRACTS

By law, if a state contracting agency (i.e., an executive branch agency or higher education constituent unit) seeks to enter into a contract that privatizes services performed by state employees, it generally must conduct a cost-benefit analysis and submit to the State Contracting Standards Board a business case for the contract.

For privatization contracts not subject to this requirement (e.g., contracts for services that are currently privatized), the act requires the contracting agency to evaluate the contract to determine if entering into or renewing it is the most cost-effective way of delivering the service. The agency must do so by determining the service's costs, which by law are all reasonable, relevant, and verifiable expenses, including, among other things, salary, materials, supplies, overhead, and the normal cost of fringe benefits, as calculated by the comptroller. The Office of Policy and Management secretary must (1) prescribe a template for the agency to evaluate the service and (2) verify the agency's evaluation. The secretary may waive the evaluation requirement in exigent or emergency circumstances.

The act also defines the normal cost of fringe benefits for purposes of the

contract privatization law as the amount of contributions required to fund the benefit, allocated to the current year of service.

By law, a privatization contract is an agreement or series of agreements between a state contracting agency and a person or entity in which the person or entity agrees to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by state employees. It does not include contracts with a nonprofit agency that were in effect as of January 1, 2009 and, through a renewal, modification, extension, or rebidding of contracts, continue to be provided by a nonprofit agency.

#### § 17 — NOTIFICATION OF POLLING PLACE HOURS EXTENSIONS

The act allows each candidate on the ballot in an election to provide, to the registrars of voters in any town in which the ballot is to be voted on, the name and contact information (including instructions for leaving a message) for an individual who should be notified if polling place hours have been or may be extended. The act requires registrars, if they are aware of a court proceeding or order concerning an extension of polling place hours, to immediately notify any individuals identified by the candidates. If the registrar does not reach an individual on the first attempt, he or she must leave a message in accordance with the candidate's instructions. The act specifies that registrars do not have to notify an individual of a court proceeding's outcome if they have already provided him or her with notice of the proceeding.

#### BACKGROUND

##### *Related Act*

PA 14-217 (§ 161) also allows DORS to accept a bequest or gift of money.

##### *Extending Contracts Without Competitive Bidding*

The law sets conditions under which the commissioner may extend contracts for goods and services without competitive bidding when they would otherwise be subject to such bidding. It allows him to do so if he determines in writing that:

1. soliciting competitive bids would cause a hardship for the state,
2. such bids would significantly increase the costs of the procured goods or services, or
3. the current contractor is the only one that can fulfill the contract.

If the commissioner determines that competitively rebidding the contract would create a hardship for the state or drive up the costs, he must take the additional step of soliciting competitive quotations from at least three other contractors besides the current one. If he determines in writing that the contractor's quote is equal to or lower than the other quotes, he may extend the contract without competitive bidding. He may extend a contract twice without competitive bidding.

##### *Small Contractors and Minority Business Enterprises*

## OLR PUBLIC ACT SUMMARY

A small contractor is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent. Minority business enterprises are small contractors owned by women, minorities, or people with disabilities who have managerial and technical competence and experience directly related to their principal business activities.

### *CMR Projects*

In a CMR project, the owner (e.g., DAS) hires a firm with construction experience (the construction manager or “CM”), usually during a project’s design phase, to manage the entire construction process. The CM provides pre-construction services such as estimating costs, budgeting, reviewing constructability and suggesting construction alternatives, and scheduling. Once the design is finalized, the CM seeks competitive bids from subcontractors for each project element (e.g., electrical, mechanical, carpentry, roofing). Once the subcontractors’ bids are received and verified for compliance with project requirements, scope, and specifications, the CM and the project owner negotiate and set a GMP for construction. The CM assumes the risk to complete the project within the GMP.

The GMP includes the CM’s fee, the cost of the work, and contingency funds for the project. The CM is responsible for costs that exceed the GMP, excluding any work not included in the final GMP that the owner authorizes through a change order process.

### *On-Call Contracts*

An on-call contract defines a broad range of consultant services (e.g., architectural services, professional engineers, accountants, and others) and is generally valid for two to three years. An on-call contract is generally not connected to a specific project; rather, DAS subsequently issues task letters to firms with on-call contracts that identify a specific scope of services to be performed and the fee for those services.

DAS must establish selection panels for evaluating consultant services proposals (including those for on-call contracts) if the value of the services exceeds \$300,000. The panels must submit a list of the most qualified firms to the DAS commissioner for his consideration.

### *Person With a Disadvantage*

For the purposes of the janitorial work program (expanded by the act to allow contractual services), a person has a disadvantage if (1) his or her income is no more than 200% of the federal poverty level for a family of four or (2) he or she is eligible for employment services under the federal Workforce Investment Act as the state Labor Department determines.

OLR Tracking: TA:LH:JKL:ro